



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6136-N-01]

Waiver and Alternative Requirement for Community Development Block Grant Disaster Recovery (CDBG-DR) Grantees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice addresses Community Development Block Grant disaster recovery (CDBG-DR) funds. Specifically, this notice waives and establishes an alternative requirement for the timing of HUD's review of CDBG-DR Action Plans for Disaster Recovery and Action Plan Amendments that were pending approval as of December 21, 2018. HUD is taking this action due to a lapse in its appropriations for FY 2019 as of that date and the resultant inability to satisfactorily complete the review and approval process consistent with its customary timeline.

DATES: Applicability Date: **[Insert date five days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: David C. Woll, Jr., Principal Deputy Assistant Secretary, Department of Housing and Urban Development, 451 7th Street, SW, Room 7100, Washington, DC 20410, telephone number 202-708-2690. Persons with hearing or speech disability may access this number via TTY/VRS by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Mr. Woll at 202-708-0033. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION

I. Waiver and Alternative Requirement for HUD Review of Action Plans for Disaster Recovery and Action Plan Amendments Related to Funding Appropriated by Public Laws 115-123 and 115-56.

Public Law 115-123¹ appropriated \$28 billion of Community Development Block Grant disaster recovery (CDBG-DR) funding for two purposes: 1) To address unmet needs arising from certain major declared disasters that occurred in 2017; and 2) To fund mitigation activities for all CDBG-DR grantees that received CDBG-DR funding in response to unmet needs arising from major disasters declared in 2015, 2016, and 2017. These funds were in addition to \$7.4 billion appropriated by Public Law 115-56² for unmet needs arising from major declared disasters in 2017. HUD allocated virtually all funding for unmet needs³ and established administrative requirements via two Federal Register Notices published on February 9, 2018 (83 FR 5844-5869) and August 14, 2018 (83 FR 40314-40325).

In general, the funds are to be used for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) (HCD Act) related to disaster relief, long-term recovery, restoration of infrastructure and housing and economic revitalization in the “most impacted and distressed” areas defined by HUD. By providing the supplemental disaster recovery funding under Title I of the HCD Act, Congress implicates the general statutory and regulatory requirements of the Community Development Block Grant (CDBG) program.

Both Public Law 115-123 and 115-56 include the following proviso with respect to CDBG-DR funding:

¹ See Title XI, Subdivision I, Division B of Public Law 115-123, the Bipartisan Budget Act of 2018.

² See Division B of Public Law 115-56, Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements, 2017

³ While HUD has informally indicated how it will allocate \$2 billion in CDBG-DR unmet need funding to enhance or improve electrical power systems in jurisdictions affected by Hurricane Maria in 2017, the formal allocation will be made via a Federal Register Notice to be published in the future.

Provided further, That prior to the obligation of funds a grantee shall submit a plan to the Secretary for approval detailing the proposed use of all funds, ... :

HUD's Federal Register Notice of February 9, 2018, establishes the requirements and criteria that inform these plans and substantial amendments thereto (*see* section VI., A. 2., *Action Plan for Disaster Recovery waiver and alternative requirement* (83 FR 5849)). Section VI., A. 2. (e) is entitled *Review and Approval of Action Plan* and states that "HUD will review each action plan within 45 days from the date of receipt." The above referenced requirements are also generally applicable to CDBG-DR funds allocated by the August 14, 2018, Notice, via Section II., "Use of Funds."

For CDBG-DR funds appropriated by Public Laws 115-123 and 115-56, HUD currently has three Action Plan Amendments (State of Florida, the Commonwealth of Puerto Rico and the United States Virgin Islands (USVI)) pending review and approval involving an aggregate of \$9.3 billion. In addition, there are Action Plans from the states of California, Georgia and Missouri pending review and approval for an aggregate of \$221 million.

Public Laws 115-123 and 115-56 also include the following proviso:

Provided further, That in administering the funds under this heading, the Secretary of Housing and Urban Development may waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), if the Secretary finds that good cause exists for the waiver or alternative requirement and such waiver or alternative requirement would not be inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974:

This proviso enables HUD to waive various statutory requirements applicable to CDBG and to establish alternative requirements to those provisions. In this Notice, HUD is applying this authority to extend the period available for HUD review of pending Action Plan Amendments and Action Plans involving CDBG-DR funding under Public Laws 115-123 and 115-56.

Due to the lapse of FY 2019 appropriations for HUD as of December 21, 2018, HUD has already issued a regulatory waiver extending the HUD review period for the Action Plan Amendments submitted by Florida, Puerto Rico and the USVI from 45 days to 60 days, which is the period set forth under the applicable statutory provision (42 U.S.C. 12705(c)(1)) for consideration of housing strategy, which is analogous to an action plan or action plan amendment. HUD has not yet addressed the status of the pending Action Plans for California, Georgia and Missouri as the 45-day review period for these submissions occurs in late January, 2019. However, HUD cannot be assured of completing the reviews of these pending submissions and issuing affirmative approvals as required by Public Laws 115-123 and 115-56 given the impact upon HUD's operations during the appropriations lapse period. Therefore, the Secretary finds that there is good cause to waive the statutory sixty (60) day review deadline established by 42 U.S.C 12705(c)(1) and is issuing an alternative requirement for review of pending Action Plan Amendments and Action Plans involving funding under Public Laws 115-123 and 115-56. HUD will review the pending Action Plan Amendments and Action Plans and provide affected grantees with a decision within a time period which will be announced by HUD after enactment of funding for the Department's normal operations.

Failure to extend the review period could lead to deemed approvals upon expiration of the customary 60-day review period, an outcome that would be inconsistent with both HUD's

oversight responsibilities and the purposes of the CDBG-DR funding or, alternatively, disapproval. Grantees with pending submissions are advised that the extension of HUD's review period and resulting delays should not be considered a commentary on the submissions but is a recognition of the current circumstances.

II. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice is 14.228 for State CDBG grantees.

III. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: January 4, 2019

Benjamin S. Carson, Sr.
Secretary

[BILLING CODE: 4210-67]

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